IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:14.11.2006

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM

AND

THE HON'BLE MR. JUSTICE S. TAMILVANAN

WRIT APPEAL NO.2212 of 2000

and CMP.No.19204 of 2000

and WAMP.No.5719 of 2002

K. Ammayappan .. Appellant/Petitioner

vs.

1. The Commissioner
   Hindu Religious and Charitable
   Endowments (Administration)
   Department, Madras 600 034.

2. The Deputy Commissioner
   - Executive Officer
   Arulmighu Dhandayuthapani
   Swami Thirukkoil, Palani.

3. The Chairman
   Arulmighu Dhandayuthapani
   Swami Thirukkoil, Palani.

4. The Secretary
   Sri Palaniandavar Arts College
   Palani. .. Respondents/Respondents

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Writ Appeal is filed under Clause 15 of the Letters Patent against the order of the learned single Judge of this Court

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dated 12.06.2000 made in W.P.No.17680 of 1992 petition presented to this Court under Article 226 of the constitution of India to issue a writ of Certiorarified Mandamus calling for all the records relaxing to the order of the 3rd respondent in resolution No.161, dated 5.2.1986 and the consequential order of the 2nd respondent Na.Ka.4177/85/A, dated 10.3.1986 in so far as the treating the petitioner's appointment as a fresh appointment and placing him as Junior Assistant with bottom scale of pay in the service of the 2nd respondent temple is concerned and the consequential orders of the 2nd respondent in his Na.Ka.5318/89-1/A1, dated 15.6.1990, as confirmed in appeal by the 1st respondent through order in Mu.Mu.53928/30 Z3 dated 21.10.1991 and Mu.Mu.24433/92/Z3 dated 13.5.1992, quash the same and direct the Respondents herein to count the petitioner's service from 21.7.1965 for the purpose of seniority, promotion, pay protection and all other attendant benefits.

For appellant : Mr. T.S. Sivagnanam

For respondents: Mr. T. Chandrasekaran
Special Govt., Pleader forR.1

Mr. M. Venkatachalapathy,
Senior counsel for
Mr. M. Sriram for R.2.

No appearance for R.3 & R.4.

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JUDGMENT

(Judgment of the Court was delivered by P. SATHASIVAM,J.)

The above writ appeal is filed by the petitioner in the writ petition against the order of the learned single Judge dated 12.06.2000 made in W.P.No.17680 of 1992, in and by which the learned Judge dismissed the writ petition.

2. According to the appellant/writ petitioner, he was appointed as a Hostel Store Clerk on probation in Sri Palani Andavar Arts College Hostel on 21.07.1965. The said Hostel is managed and administered by Sri Palaniandavar Arts College. The College established and administered by Arulmighu Dhandayuthapani Swami Thirukkoil, which is under the control of the first respondent. The Principal of the 4th respondent College, by proceedings dated 24.07.1968, ordered to retain the petitioner in the Hostel as Clerk.

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Thereafter, the 4th respondent by order dated 11.02.1969, enhanced the rate of dearness allowance of the petitioner on par with the rate sanctioned to the employees of the Devasthanam with effect from 01.07.1968. Thus, the petitioner became the permanent employee of the College, being managed by the Devasthanam.

3. The College Managing Committee in its meeting dated 05.07.1982, resolved to pay dearness allowance benefit in terms of G.O.Ms.No.193 dated 31.03.1982, to all the Hostel Staff Members and the petitioner was also paid the said amount. Consequent to the closure of the hostel, the 4th respondent transferred and posted the petitioner as Junior Assistant with pay protection in Arulmighu Dhandayuthapani Swami Thirukkoil/Main Deity Protection Expert committee, by proceedings dated 11.07.1984. The said Expert Committee was headed by Hon'ble Mr. Justice B.S. Somasundaram, a retired Judge of this Court. The petitioner joined as Junior Assistant and due to the death of the Chairman on 06.07.1984 and as per the order of the second respondent dated 14.11.1984, the 4th respondent by proceedings dated 06.12.1984 re-transferred the petitioner to the College hostel at Palani and posted him as Clerk in the Hostel.

4. Since the hostel had to be closed once again on the basis of the representation made by the hostel staff members, the College Managing Committee in its meeting dated 30.08.1985, resolved to absorb all the five hostel staff members, including the petitioner in the vacant posts in the temple. The Managing Committee did not impose any pre-condition for absorption. However, the second respondent, contrary to the earlier decision of the College Managing Committee, by his resolution dated 05.02.1986 imposed unilateral condition that the hostel staff members must be discharged from service and they should be appointed as fresh incumbents in the bottom scale of pay and also they will be placed lowest in the seniority list. The said decision was taken without giving opportunity to the petitioner to exercise his option which is opposed to public policy and all canons of law. Besides several representations made to the authorities concerned, the petitioner also submitted an appeal to the first respondent as against the order of the second respondent. The first respondent without looking into the matter on merits, by order dated 21.10.1991, rejected petitioner's appeal without stating any reason. The orders of the respondents obliterating 20 years of valuable service of the petitioner with Pay Commission benefits and dearness allowance is arbitrary and opposed to public policy. Having no other remedy, the petitioner has approached this Court by way of writ petition.

5. The second respondent filed a counter affidavit stating that since the hostel was closed and as per the resolution of the College Committee dated 30.08.1985, and by order dated 28.02.1986 of the

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Principal of the Arts College, the service of the petitioner was terminated with effect from 28.02.1986. His appointment as Junior Assistant in the temple was purely as fresh appointment and it had nothing to do with his previous position. He was not at all a Government servant at any point of time. His salary and other emoluments were met from and out of collection made from students, who are staying in the hostel. Only on the humanitarian consideration, he was posted as Junior Assistant in the Moolavar Protection Expert Committee. The service of the petitioner as Hostel Clerk is either Government service or Temple service and he was not paid salary either from College Committee Funds or from temple funds. Hence, the question of considering his previous service as Hostel Clerk, Moolavar Expert Committee Clerk and pay revision does not at all arise.

6. The first respondent has filed a counter affidavit reiterating the stand taken by the second respondent.

7. By order dated 12.06.2000, the learned single Judge, after accepting the stand of the respondents, refused to interfere with the orders passed by the respondents, and dismissed the writ petition.

8. Heard Mr. T.S. Sivagnanam, learned counsel for the appellant, Mr. T. Chandrasekaran, learned Special Government Pleader for the first respondent and Mr. M. Venkatachalapathy, learned senior counsel for the second respondent.

9. At the outset, it is brought to our notice that the date of birth of the writ petitioner / appellant is 06.03.1944, and when he jointed duty as Clerk in the hostel on 26/07/1965, his age was only 21 years, and he was not 25 years of old on the date of his appointment as per Rule 5 of the Rules framed under Section 116 (2) XXIII of Hindu Religious and Charitable Endowments Act. This information was pressed into service to show that his appointment was not made in regular temple service. Even though his probation was declared with effect from 05.01.1970, after closure of the hostel, the service of the petitioner was terminated with effect from 28.02.1986. However, it is pointed out by the temple authorities that on humanitarian ground, considering the services of the petitioner, he was appointed as Junior Assistant in the temple office as per the proceedings of the Executive Officer dated 10.03.1986. It is stated that it was purely a fresh appointment and it had nothing to do with his previous position. Though the petitioner made a representation, the Commissioner, by proceedings dated 21.10.1991, rejected the same. Against the said order, the petitioner filed the writ petition, praying to quash the order and to count his service from 21.07.1965.

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10. It is demonstrated before us that the petitioner's salary was paid from and out of the collection made from the students, who were studying in the hostel and his salary was not paid either from the College funds or from temple funds. In such circumstances, as rightly pointed out by the learned senior counsel, he was not at all a temple servant, when he was working as a hostel clerk.

11. Coming to his appointment as Junior Assistant in the Moolavar Protection Expert Committee, here again, it is explained by the respondents that only on humanitarian ground, in view of the closure of hostel, the Managing Committee had recommended his name and later he was appointed, however, after the demise of the Chairman of the Moolavar Expert Committee, again he was posted as hostel clerk and joined there on 06.12.1984. It is also demonstrated before us that his initial appointment in the hostel was not made either by temple authorities or by College Committee and as stated earlier, the salary and other allowances were made only from the funds collected from the students staying in the hostel and hence his service as Hostel Clerk cannot be treated as temple service for calculating his period of service.

12. On going through the entire materials, including various orders placed before us, we are satisfied that during the period when he served as Hostel Clerk, he was paid from and out of the contributions made by the students staying in the hostel and hence he cannot be treated as a temple staff. We are also satisfied that his appointment as Junior Assistant in the temple for a short period was only on humanitarian ground and as a fresh appointment. As rightly pointed out by the learned senior counsel, his previous service was not at all regular service and that should not be considered for calculation of period of service. As said earlier, when he was appointed as Junior Assistant in Moolavar Expert Committee, the same was in temporary basis on humanitarian consideration. All these aspects have been duly considered by the learned Judge who has rightly dismissed the writ petition. In view of the factual details as available in the counter affidavit and the typed set of papers, we are satisfied that there is no need to refer the case-laws relied on by the learned counsel for the petitioner/appellant.

Under these circumstances, we do not find any error or infirmity or valid ground for interference. Consequently, the writ appeal fails and the same is dismissed. No costs.Connected miscellaneous petitions are closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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   Palani.

+1cc to Mr.M.Sriram, Advocate Sr 54610
+1cc to the Special Government Pleader Sr 54580
+1cc to Mr.T.S.Sivagananam, Advocate Sr 54527

BV (CO)
km/23.11.

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